

Bruce Berline, Esq.
Law Office of Bruce Berline
2nd Floor, Macaranas Building
P.O. Box 5682 CHRB
Garapan, Saipan, MP 96950
Telephone: (670) 233-3663
Facsimile: (670) 233-5262

FILED
Clerk
District Court

JUL 10 2008

Attorney for Plaintiff Yoko Kamiyama

For The Northern Mariana Islands
By _____
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT

FOR THE

NORTHERN MARIANA ISLANDS

YOKO KAMIYAMA,

Plaintiff,

v.

BRENT J. HINKEMEYER, TAGA AIR
CHARTER SERVICES, INC., TINIAN)
DYNASTY HOTEL, INC., HONG KONG)
ENTERTAINMENT (OVERSEAS))
INVESTMENT, LTD., and DOES 1-75,

Defendants.

CV NO.

08 - 00030

COMPLAINT

DEMAND FOR JURY TRIAL

INTRODUCTION

Plaintiff Yoko Kamiyama (hereinafter referred to as "Plaintiff," or "Plaintiff Kamiyama"), by and through her counsel, Bruce Berline, hereby brings this action to recover damages for injuries, including severe mental and physical injuries, suffered by Plaintiff Kamiyama when, on August 11, 2006, an airplane in which Plaintiff Kamiyama and others were riding in, crashed and thereafter burst into flames – destroying the airplane. Accordingly, Plaintiff Kamiyama alleges the following:

JURISDICTION/JURY TRIAL

1. This is a civil action. Plaintiff is a citizen and resident of Japan while the defendants consists of a citizen and resident of a state within the United States or are corporations with principal places of business located in the Commonwealth of the Northern Mariana Island ("CNMI"), and the

1 amount in controversy, exclusive of interest and costs, exceeds seventy-five thousand dollars
2 (\$75,000.00). Thus, this Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C.
3 §1332 (a) and (d).

4 2. Alternatively, this Court has subject matter jurisdiction under 28 U.S.C. § 1331, in that
5 this action arises under the laws, regulations, and treaties of the United States, including the Warsaw
6 Convention and its progeny, namely the Convention for the Unification of Certain Rules Relating to
7 International Transportation by Air, concluded at Montreal, Canada, on May 28, 1999.

8 3. This Court has personal jurisdiction over the parties to this civil action.

9 4. Venue is proper in this matter pursuant 28 U.S.C. §1391(a) and (c) and under the
10 applicable treaties of the United States.

11 5. The factual and jurisdictional grounds upon which Plaintiff Kamiyama's claims are
12 premised entitle Plaintiff to a trial by jury. Plaintiff Kamiyama hereby demands a trial by jury.

13 **PARTIES**

14 6. Plaintiff Kamiyama is presently, and for all times mentioned herein was, a citizen of
15 Japan residing in Utsunomiya City.

16 7. Plaintiff, based upon belief and information, alleges that Defendant Brent J. Hinkemeyer
17 ("Pilot Hinkemeyer") is a citizen and resident of a state within the United States and was the pilot in
18 command of the Piper Cherokee, model number PA32-300, registration number N4509T (hereinafter
19 the "Airplane"), when it crashed on August 11, 2006.

20 8. On and before August 11, 2006, Pilot Hinkemeyer was employed by Defendant Tinian
21 Dynasty Hotel, Inc., Defendant Taga Air Charter Services, Inc., and/or Defendant Hong Kong
22 Entertainment (Overseas) Investment, Ltd.

23 9. Defendant Taga Air Charter Services, Inc., ("Taga Air"), at all times relevant to this
24 complaint, was a corporation organized and existing under the laws of the CNMI with its principal place
25 of business in the CNMI.

1 operators, lessees of the Airplane, and/or the agents, servants, employers, employees, representatives,
2 co-venturers, associates, vendors, suppliers, manufacturers, lessors, insurers, insurance agents,
3 subcontractors or contractors of the named defendants.

4 20. Plaintiff is informed and believes and thereon alleges, that each of the defendants
5 designated as a DOE is negligently, consciously, wilfully, intentionally, knowingly, recklessly, or
6 otherwise tortuously or legally responsible in some manner for the events and happenings referred to
7 herein, and negligently, wilfully intentionally, knowingly, recklessly, or otherwise tortuously caused
8 injuries and damages proximately thereby to Plaintiff as hereinafter alleged, either through said
9 defendants' own conduct, or through the conduct of their agents, servants, or employees, and each of
10 them.

11 21. Plaintiff and/or her representatives have made diligent and good faith efforts to ascertain
12 the full names and identities, the extent and nature of interests, of Doe Defendants, in the events upon
13 which Plaintiff's claims are premised.

14 22. Plaintiff remains unable, at this time, to identify with particularity, those additional
15 defendants against whom Plaintiff has additional prospective claims, and will seek leave to amend this
16 complaint, in order to more specifically name and identify Defendants DOES 1-75, if and when the
17 identities of those defendants are more fully and accurately determined (hereinafter all defendants,
18 including Does 1-75, are referred to, collectively, as the "Defendants").

19 23. Defendants Taga Air, Dynasty Hotel and Hong Kong Entertainment acted as each others'
20 agents, within the course and scope of the agency, with respect to the conduct alleged in this complaint
21 and/or were joint venturers.

22 24. Plaintiff is informed and believes and thereupon alleges that each of the Defendants was
23 the agent and employee of each of the remaining Defendants and, in doing the things hereinafter alleged,
24 was acting within the course of such agency and employment.

25 25. Plaintiff is informed and believes and thereupon alleges that each of the Defendants aided,
26 abetted, ratified, authorized, incited, compelled, negligently supervised and/or coerced each act of each
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1 34. Moreover, prior to the Incident, the Airplane's manufacturer issued a mandatory service
2 bulletin regarding the installation of shoulder harnesses for all passengers.

3 35. The mandatory service bulletin included a warning not to seat passengers in the
4 Airplane's optional seventh seat if it was installed.

5 36. Taga Air determined that compliance with said mandatory service bulletin was required
6 and that the provisions of the mandatory service bulletin had been complied with.

7 37. The FAA's rules and regulations, including, without limitation, FAR Part 135, requires
8 compliance with manufacturer's mandatory service bulletins.

9 38. Additionally, on the day of the Incident, the Airplane was improperly loaded and loaded
10 in excess of its allowable operating weight prior to prior takeoff, in violation of the Airplane's flight,
11 operating and/or owner's manual, and/or applicable FAA rules and regulations, including, without
12 limitation, the Federal Aviation Regulations.

13 39. Further, Defendants failed to obtain liability insurance on the Airplane and provide the
14 FAA with evidence of such liability insurance for the Airplane.

15 40. Such failure to procure, and provide the FAA with evidence of liability insurance is a
16 violation of the FAA rules and regulations, including, without limitation, the Federal Aviation
17 Regulations, and certain treaties of the United States.

18 41. Despite the many deficiencies known to exist with the Airplane, its systems and its crew,
19 the Defendants informed the FAA that the Airplane, and its systems had been inspected and determined
20 to be safe, airworthy and in compliance with FAA rules and regulations including, without limitation,
21 the FAA's airworthiness requirements.

22 42. Moreover, the Defendants held the Airplane, its systems, and its crew, out to the public,
23 which included Plaintiff Kamiyama, as being safe and fully certified and in full compliance with the
24 Airplane's flight, operating and/or owner's manual, applicable Airworthiness Directives, Circulars,
25 Advisories, Service Bulletins, and/or applicable FAA rules and regulations, including without limitation,
26 the Federal Aviation Regulations.

1 56. As a result of the Airplane crashing into the jungle, Plaintiff Kamiyama sustained serious
2 and severe injuries, many of which are permanent in nature, including, without limitation, burns on her
3 arms and legs, fractured and broken bones, various contusions and other injuries. Plaintiff also suffered
4 and continues to suffer tremendous mental pain and anguish as well as suffering a severe shock to her
5 entire system. As a further result of Plaintiff's injuries, Plaintiff has been and is now and will be in the
6 future prevented from participating in and enjoying the normal pleasures of life to which Plaintiff was
7 formerly accustomed.

8 57. Said injuries, along with other injuries and damages, have caused, and continue to cause,
9 and will in the future continue to cause Plaintiff great physical pain and mental anguish and suffering.
10 Furthermore, such injuries have caused Plaintiff economic damages in the form of lost wages, as well
11 as past, present and future medical, hospital and other related expenses.

12 **FIRST CAUSE OF ACTION**
13 **NEGLIGENCE**

14 58. Plaintiff repeats and realleges, and incorporates herein by reference, each and every
15 allegation contained in the preceding paragraphs.

16 59. The August 11, 2006 crash of the Airplane and resulting injuries and damages were
17 caused by Defendants negligently operating, maintaining, certifying, servicing and/or controlling the
18 Aircraft.

19 60. Defendants, and each of them, serviced, maintained, repaired, certified, operated and/or
20 controlled the Airplane.

21 61. Defendants, and each of them, as common carriers, innkeepers, or other entities, owed
22 Plaintiff an affirmative duty to exercise reasonable care in servicing, maintaining, repairing, certifying,
23 operating and/or controlling the Airplane.

24 62. Defendants, and each of them, including their officers, agents, employees and servants,
25 breached the aforementioned duties by, *inter alia*,
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1 a. Failing to properly service, maintain, certify, inspect, operate, insure and/or
2 control the Airplane pursuant to the Airplane's flight, operating and/or owner's manual, applicable
3 Airworthiness Directives, Circulars, Advisories, Service Bulletins and/or applicable FAA rules and
4 regulations, including, without limitation, the Federal Aviation Regulations;

5 b. Failing to provide adequately trained, and/or certified operators of the Airplane;

6 c. Failing to properly approve operators of the Airplane and/or,

7 d. Failing to properly and adequately train, instruct, educate and/or advise persons
8 maintaining, repairing, operating and controlling the Airplane.

9 63. Defendants also failed to otherwise exercise due care with respect to the matters alleged
10 in this complaint

11 64. The Airplane's flight, operating and/or owner's manual, applicable Airworthiness
12 Directives, Circulars, Advisories, Service Bulletins and/or applicable FAA rules and regulations,
13 including, without limitation, the Federal Aviation Regulations, provide duties of care and are designed
14 to protect, *inter alia*, passengers from the danger and hazards of air travel.

15 65. Plaintiff is a member of the class which the Airplane's flight, operating and/or owner's
16 manual, applicable Airworthiness Directives, Circulars, Advisories, Service Bulletins and/or applicable
17 FAA rules and regulations, including, without limitation, the Federal Aviation Regulations, are designed
18 to protect.

19 66. Plaintiff suffered the type and kind of harm which the Airplane's flight, operating and/or
20 owner's manual, applicable Airworthiness Directives, Circulars, Advisories, Service Bulletins and/or
21 applicable FAA rules and regulations, including, without limitation, the Federal Aviation Regulations,
22 were intended to prevent.

23 67. Moreover, the Airplane was within the exclusive control of Defendants, including their
24 agents, servants, officer and or other employees and the events leading up to and causing Plaintiff's
25 injuries are such as in the ordinary course of things would not occur if the one having exclusive control
26 uses proper care, and thus the doctrine of *Res Ipsa Loquitur* is applicable and should be applied in this
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1 case.

2 68. The Defendants' above described conduct constitutes gross negligence, and/or a reckless
3 and/or willful, wanton disregard for Plaintiff's safety and entitles Plaintiff to an award of punitive
4 damages in an amount according to proof at trial.

5 69. Defendants's negligence and/or gross negligence, and each of them, as herein alleged,
6 directly and proximately caused Plaintiff to suffer damages including, without limitation, past and future
7 pain and suffering, past and future medical and other related expenses, past and future wage losses, and
8 future economic opportunity losses. Accordingly, Plaintiff has sustained and incurred damages in an
9 amount according to proof at trial.

10 **SECOND CAUSE OF ACTION**
11 **INTENTIONAL MISREPRESENTATION**

12 70. Plaintiff repeats and realleges, and incorporates herein by reference, each and every
13 allegation contained in the preceding paragraphs.

14 71. Defendants misrepresented the safety of the Airplane, its systems, and its crew to the
15 FAA and to the public, including Plaintiff, specifically, without limitation, by holding out the Airplane,
16 its systems, and its crew as being safe and fully certified and in full compliance with the Airplane's
17 flight, operating and/or owner's manual, applicable Airworthiness Directives, Circulars, Advisories,
18 Service Bulletins, and/or applicable FAA rules and regulations, including, without limitation, the Federal
19 Aviation Regulations when the Airplane was not in such compliance.

20 72. Defendants intended to induce the public's reliance, including the Plaintiff's reliance,
21 upon such representations.

22 73. Defendants knew the statements were false and/or recklessly disregarded the truth in
23 making such representations.

24 74. Plaintiff Kamiyama reasonably relied upon the representations.

25 75. The Defendants' misrepresentations were a proximate cause of Plaintiff's injuries.
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1 76. The representations constituted material misrepresentations that deceptively characterized
2 the Airplane, its systems and its crew as safe and fully certified and in full compliance with the
3 Airplane's flight, operating and/or owner's manual, applicable Airworthiness Directives, Circulars,
4 Advisories, Service Bulletins, and/or applicable FAA rules and regulations, including, without
5 limitation, the Federal Aviation Regulations.

6 77. The Defendants' conduct in making the representations was reckless and wanton.

7 78. Plaintiff was deceived into believing that the Airplane was safe when in fact there was
8 a high likelihood of harm and the resulting harm could be foreseeably devastating.

9 79. Defendants knew or should have known of the extreme danger that existed. In spite of
10 this knowledge, they willfully and unconsciously misrepresented that the Airplane, its systems and crew
11 as being safe and fully certified and in full compliance with the Airplane's flight, operating and/or
12 owner's manual, applicable Airworthiness Directives, Circulars, Advisories, Service Bulletins, and/or
13 applicable FAA rules and regulations, including, without limitation, the Federal Aviation Regulation.

14 80. As a direct and proximate result of said tortuous acts, omissions or conduct of Defendants
15 and each of them as herein alleged, Plaintiff has sustained and incurred and are certain in the future to
16 sustain and incur losses and damages in an amount according to proof at trial.

17 81. As a result of that reckless and wanton conduct, on the part of the Defendants, Plaintiff
18 is entitled to punitive damages in an amount according to proof at trial.

19 **THIRD CAUSE OF ACTION**
20 **NEGLIGENT MISREPRESENTATION**

21 82. Plaintiff repeats and realleges, and incorporates herein by reference, each and every
22 allegation contained in the preceding paragraphs.

23 83. Defendants misrepresented the quality of the Airplane, its systems, and its crew as being
24 safe and fully certified and in full compliance with the Airplane's flight, operating and/or owner's
25 manual, applicable Airworthiness Directives, Circulars, Advisories, Service Bulletins, and/or applicable
26 FAA rules and regulations, including, without limitation, the Federal Aviation Regulations when the
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1 Airplane was not in such compliance.

2 84. In so misrepresenting the safety of Airplane, its systems, and its crew, Defendants
3 breached their duty of due care to Plaintiff.

4 85. Plaintiff reasonably relied upon the representations.

5 86. The Defendants' misrepresentations were a proximate cause of Plaintiff's injuries.

6 87. As a direct and proximate result of said tortuous acts, omissions or conduct of Defendants
7 and each of them as herein alleged, Plaintiff has sustained and incurred and are certain in the future to
8 sustain and incur losses and damages in an amount according to proof at trial.

9 **FOURTH CAUSE OF ACTION**
10 **ACTION UNDER CNMI CONSUMER PROTECTION LAWS**

11 88. Plaintiff repeats and realleges, and incorporates herein by reference, each and every
12 allegation contained in the preceding paragraphs.

13 89. Defendants conduct in marketing, advertising, selling, servicing, maintaining, inspecting,
14 operating, insuring, controlling and/or placing the Airplane and the service of transporting paying
15 passengers on the market constitutes violations of the CNMI's Consumer Protection Act, 4 CMC §§
16 5101 et seq.

17 90. Specifically, without limitation, Defendants engaged in the following unfair methods
18 and/or deceptive acts:

19 (a) Caused a likelihood of confusion or of misunderstanding as to the source, sponsorship,
20 approval, or certification of the Airplane and its crew;

21 (b) Represented that the Airplane had sponsorship, approval, characteristics, and/or
22 quantities that they did not have and/or that Pilot Hinkemeyer was sponsored, approved, had the
23 appropriated status and/or affiliation that he did not have;

24 (c) Represented that the Airplane was of a particular standard when the Airplane did not
25 meet that particular standard;

26 (d) Engaged in acts and/or practices which were unfair or deceptive to the Plaintiff;

1 (e) Represented that the Airplane was fit for a particular purpose, when it was not fit for that
2 purpose;

3 (f) Represented that the service of flying the Airplane was provided by qualified, certified
4 and/or authorized pilot when the Defendants knew or should have known that he was not so
5 qualified, certified and/or authorized; and/or,

6 (g) Introduced into commerce a service which the Defendants knew or should have known
7 was unsafe or which the Defendants knew or should have known would cause an unsafe condition in
8 normal use, including performing a service which may cause an unsafe condition.

9 91. As a result of the above omissions and commissions, taken singularly or collectively,
10 Plaintiff was injured.

11 92. In addition to actual damages, Plaintiff is entitled to liquidated damages and attorneys
12 fees and costs.

13 **FIFTH CAUSE OF ACTION**
14 **ACTION UNDER UNITED STATES TREATY**

15 93. Plaintiff repeats and realleges, and incorporates herein by reference, each and every
16 allegation contained in the preceding paragraphs.

17 94. Under the provisions of the treaties of the United States, including the Warsaw
18 Convention and its progeny namely the Convention for the Unification of Certain Rules Relating to
19 International Transportation by Air, concluded at Montreal, Canada, on May 28, 1999, Defendants
20 conduct, including but not limited to the negligent acts or omissions set forth above, constitutes an
21 accident, in that the conduct was an unexpected and unusual event or happening external to the
22 passenger, Plaintiff Kamiyama, and was a causal link to her injuries and damages.

23 95. Such accident took place onboard the Airplane or in the course of any operations of
24 embarking or disembarking.

25 96. At the time of Plaintiff Kamiyama's injuries and damages, she was engaged in
26 undivided international carriage and/or transportation.
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1 97. The negligent acts and/or omissions of Defendants, and each of them, including but
2 not limited to the negligent acts or omissions set forth above, was a proximate cause in Plaintiff
3 Kamiyama's injuries and damages.


4 98. Plaintiff Kamiyama's damages exceed 100,000 special drawing rights.

5 99. Defendants' misconduct was willful.

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7 **WHEREFORE**, Plaintiff requests the following from Defendants, jointly and severally,:

- 8 1. General and special damages in the amount of to be proven at trial;
- 9 2. Punitive damages in an amount to be determined at trial;
- 10 3. Liquidated damages equal to the amount of actual damages as determined at
11 trial;
- 12 4. Costs of the lawsuit;
- 13 5. Attorneys fees;
- 14 6. Pre-judgment interest; and,
- 15 7. Such other and further relief as is deemed lawful, just, or equitable under the
16 circumstances.

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18 Dated this 10th day of July, 2008.

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21 BRUCE BERLINE
22 Attorney for Plaintiff Yoko Kamiyama
23 P.O. Box 5682 CHRB
24 Saipan, MP 96950
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